

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ALLERGAN SALES, LLC and ALLERGAN,)
INC.,)
Plaintiffs,)
v.) C.A. No. 2:17-CV-10129-CCC-ESK
SANDOZ, INC., and ALCON VISION, LLC.,)
Defendants.)

STIPULATION AND ORDER

The Court, upon the consent and request of Plaintiffs Allergan Sales, Inc. and Allergan, Inc. (collectively, “Plaintiffs”) and Defendants Sandoz, Inc. and Alcon Vision, LLC. (collectively, “Sandoz”), hereby acknowledges the following Stipulation and issues the following Order in the above-captioned case.

STIPULATION

1. This Court has subject matter jurisdiction over this patent infringement action (the “Action”) and personal jurisdiction over Plaintiffs and Sandoz for purposes of the Action. Venue is proper in this Court as to Plaintiffs and Sandoz for the Action.

2. In the Action, Plaintiffs have asserted claims against Sandoz for infringement of U.S. Patent Nos. 9,770,453 (“the ’453 patent”), 9,907,801 (“the ’801 patent”), and 9,907,802 (“the ’802 patent”) (collectively, the “Patents-in-Suit”) in connection with

Sandoz's submission of Abbreviated New Drug Application ("ANDA") 91-087 directed to generic brimonidine tartrate/timolol maleate ophthalmic solution 0.2%/0.5% product to the U.S. Food and Drug Administration ("FDA").¹

3. On July 13, 2018, the Court, *inter alia*, granted Allergan's motion for preliminary injunction against Sandoz and, on August 1, 2018, entered an order setting a preliminary injunction bond under Federal Rule of Civil Procedure 65(c), which Allergan posted. On August 29, 2019, the Federal Circuit affirmed the grant of a preliminary injunction against Sandoz, and issued a mandate on October 7, 2019. The Parties have completed expert discovery. A trial date has not yet been set.

4. Each party shall bear its own attorneys' fees, expenses and costs incurred in connection with the Action.

5. The parties agree that all other claims, defenses, and counterclaims asserted against each other in Plaintiffs' and Sandoz's pleadings in the Actions, including the allegations and averments contained therein, should be dismissed, without prejudice.

SO STIPULATED:

Dated:

s/Liza M. Walsh
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Dated:

s/ Eric I. Abraham
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¹ Prior to the filing of this Action, Sandoz and Alcon merged ANDA Nos. 91-087 and 91-574 into ANDA No. 91-087. All references to the Sandoz's ANDA in this Stipulation and Order are inclusive of both ANDA Nos. 91-087 and 91-574 individually, and as merged into ANDA No. 91-087.

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*Attorneys for Defendants Sandoz Inc. and
Alcon Vision L.L.C.*

ORDER

Accordingly, pursuant to the above Stipulation, and upon the consent and request of Plaintiffs and Sandoz, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED**
THAT:

1. The filing of ANDA No. 91-087 was an act of infringement of the Patents-in-Suit under 35 U.S.C. § 271(e)(2)(A).

2. All other claims, defenses, and counterclaims asserted by the parties against each other in Plaintiffs' and Sandoz's pleadings in the Actions, including the allegations and averments contained therein, are hereby dismissed, without prejudice.

3. Absent a license agreement or other authorization, Sandoz, its officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, are hereby enjoined from manufacturing, using, offering to sell, or selling within the United States, or importing into the United States, the generic brimonidine tartrate/timolol maleate ophthalmic solution 0.2%/0.5% product described by ANDA No. 91-087 during the life of the Patents-in-Suit, including any extensions and pediatric exclusivities thereof, unless all of the claims of the Patents-in-Suit are found invalid or unenforceable by a court decision from which no appeal has been or can be taken, other than a petition for a writ of certiorari to the U.S. Supreme Court.

4. Plaintiffs are released from their obligations to maintain the preliminary injunction bond entered by this Court on August 1, 2018, and the preliminary injunction is hereby vacated. The bond (#106945063) (Dkt. No. 174) is hereby fully and unconditionally discharged, released and exonerated and Travelers is hereby released from any and all past, present and future liability arising under or in connection with the bond.

5. Plaintiffs and Sandoz each expressly waive any right to appeal or otherwise move for relief from this Stipulation And Order.

6. This Court retains jurisdiction over Plaintiffs and Sandoz for purposes of enforcing this Stipulation And Order.

7. This Stipulation And Order shall finally resolve the Action.

8. Nothing in this Stipulation and Order prohibits Sandoz from maintaining a Paragraph IV certification to the Patents-in-Suit in ANDA No. 91-087 for the purposes of receiving or maintaining final approval of Sandoz's ANDA product, nor shall prevent FDA from granting final approval to ANDA No. 91-087 at any time.

9. This Stipulation And Order is without prejudice to any claim, defense, or counterclaim in any possible future action between Sandoz and any of the Plaintiffs regarding the Patents-in-Suit and a product other than a generic brimonidine tartrate/timolol maleate ophthalmic solution 0.2%/0.5% product described by ANDA No. 91-087.

10. The Clerk of the Court is directed to enter this Stipulation And Order forthwith in the Action.

SO ORDERED:

This 28th day of January, 2022



HONORABLE CLAIRE C. CECCHI
UNITED STATES DISTRICT JUDGE